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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 GREGORY HAMILTON,

11 Petitioner,

No. CIV-S-04-0036 ALA P

12 vs.

13 MATTHEW C. KRAMER,

ORDER

14 Respondent.
15 _____/

16 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus
17 under 28 U.S.C. § 2254. He is currently serving a sentence of twenty-six years to life
18 imprisonment in the California Department of Corrections. Petitioner challenges his 2001 denial
19 of parole by the California Board of Prison Terms. For the reasons set forth below, Petitioner's
20 petition is denied.

21 I

22 On February 15, 1985, San Francisco Police received a phone call from Petitioner,
23 informing the police that Petitioner had just murdered his common law wife and their four month
24 old son. Answer, Ex. H-1 at 7. Police responded to Petitioner's apartment and discovered
25 Petitioner sitting on the floor. *Id.* Directly in front of Petitioner were the bodies of a woman and
26 a small child. *Id.* Each of the victims throats had been cut, causing them to bleed to death. *Id.*

On October 11, 1985, Petitioner was convicted of two counts of first degree murder. Answer, Ex. B at 1-2. Each count carried an enhancement for use of a deadly weapon. *Id.* Petitioner was sentenced to twenty-five years to life for each count of murder, plus an additional one year for each of the weapon enhancements. *Id.* The sentences were ordered to run concurrently for a total sentence of twenty-six years to life. *Id.*

On April 11, 2001, Petitioner appeared before the California Board of Prison Terms (“BPT”) and was assessed for suitability for parole. Answer, Ex. C at 1. While BPT praised Petitioner for his accomplishments during his incarceration, BPT found that Petitioner would pose an unreasonable risk of danger to society if released at that time. *Id.* at 63-68. BPT therefore issued Petitioner a three year denial of parole. *Id.* at 68.

Petitioner appealed the BPT denial to the BPT Office of Policy and Appeals, which denied that appeal. Answer, Ex. E at 1. Petitioner next petitioned the Superior Court of California, City and County of San Francisco (“Superior Court”) for a writ of habeas corpus. Answer, Ex. F at 1. That petition was denied. *Id.* Petitioner then petitioned the California Court of Appeal, who also denied Petitioner’s petition. Answer, Ex. G at 1-3. Finally, Petitioner petitioned the California Supreme Court and again his petition was denied. Answer, Ex. I at 1. Petitioner now seeks relief from this court.

II

Federal habeas corpus relief is not available for any claim decided on the merits in state court proceedings unless the state court's adjudication of the claim:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

Under 28 U.S.C. § 2254(d)(1), “[a] state court decision is “contrary to” ...clearly

1 established [United States Supreme Court] precedents if it applies a rule that contradicts the
2 governing law set forth in Supreme Court cases, or if it confronts a set of facts that are materially
3 indistinguishable from a decision of [the Supreme] Court and nevertheless arrives at a result
4 differing [its] precedent.” *Early v. Packer*, 537 U.S. 3, 8 (2002) (citing and quoting *Williams v.*
5 *Taylor*, 529 U.S. 362, 405-406 (2000)).

6 Under the “unreasonable application” clause of section 2254(d)(1), a federal court may
7 grant habeas corpus relief if the state court identified the correct governing legal principle from
8 the Supreme Court’s decisions, but unreasonably applied that principle to the facts of the
9 prisoner’s case. *Williams*, 529 U.S. at 413. A federal habeas court “may not issue the writ
10 simply because that court concludes in its independent judgment that the relevant state-court
11 decision applied clearly established federal law erroneously or incorrectly. Rather, that
12 application must also be unreasonable.” *Id.* at 412; *see also Lockyer v. Andrade*, 538 U.S. 63, 75
13 (2003) (it is “not enough that a federal habeas court, in its independent review of the legal
14 question, is left with a ‘firm conviction’ that the state court was ‘erroneous’”).

15 The court looks to the last reasoned state court decision as the basis for the state court
16 judgment. *Avila v. Galaza*, 297 F.3d 911, 918 (9th Cir. 2002). In this matter the decision by the
17 Superior Court provides the last reasoned state court decision. Answer, Ex. H-13 at 1.

18 III

19 A

20 Petitioner’s first claim is that there is no evidence in the record to support the finding that
21 he was unsuitable for parole. Petition at 17. Specifically, Petitioner analyzes the factor’s BPT
22 must consider when making a parole determination in order to support his contention that,
23 “[t]here is no nexus between the reasons stated for parole denial and the ultimate decision.” *Id.*
24 at 19.

25 California prisoners, whose sentences provide for the possibility of parole, have “a
26 constitutionally protected liberty interest in the receipt of a parole release date, a liberty interest

that is protected by the procedural safeguards of the Due Process Clause.” *Irons v. Carey*, No. 05-15275, __ F.3d __; 2007 WL 2027359, at *3 (9th Cir. July 13, 2007) (citing *Sass v. California Board of Prison Terms*, 461 F.3d 1123, 1128 (9th Cir. 2006); *Biggs v. Terhune*, 334 F.3d 910, 914 (9th Cir. 2003); *McQuillion v. Duncan*, 306 F.3d 895, 903 (9th Cir.2002); and *Bd. of Pardons v. Allen*, 482 U.S. 369, 377-78 (1987) (quoting *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 12 (1979)). It has been clearly established by the United States Supreme Court “that a parole board’s decision deprives a prisoner of due process with respect to this interest if the board’s decision is not supported by ‘some evidence in the record’ (*Sass*, 461 F.3d at 1128-29; *Superintendent v. Hill*, 472 U.S. 445, 457 (1985); *see also Biggs*, 334 F.3d at 915; *McQuillion*, 306 F.3d at 904), or is ‘otherwise arbitrary’ (*Hill*, 472 U.S. at 457).” *Irons*, 2007 WL 2027359, at *3.

California law requires that the BPT “determine whether a prisoner is presently too dangerous to be deemed suitable for parole based on the ‘circumstances tending to show unsuitability’ and the ‘circumstances tending to show suitability’ set forth in Cal.Code. Regs., tit. 15 § 2402(c)-(d).” *Id.* at *4. California Code of Regulations, Title 15 § 2402(c)-(d) provides that...

...[T]he circumstances tending to show that a prisoner is unsuitable include: (1) the commitment offense, where the offense was committed in “an especially heinous, atrocious or cruel manner”; (2) the prisoner's previous record of violence; (3) “a history of unstable or tumultuous relationships with others”; (4) commission of “sadistic sexual offenses”; (5) “a lengthy history of severe mental problems related to the offense”; and (6) “serious misconduct in prison or jail.” Cal.Code. Regs., tit. 15 § 2402(c). Circumstances tending to show that a prisoner is suitable for parole include: (1) the prisoner has no juvenile record; (2) the prisoner has experienced reasonably stable relationships with others; (3) the prisoner has shown remorse; . . . (6) the prisoner lacks any significant history of violent crime; . . . (8) the prisoner “has made realistic plans for release or has developed marketable skills that can be put to use upon release”; (9) “[i]nstitutional activities indicate an enhanced ability to function within the law upon release.” Cal.Code. Regs., tit. 15 § 2402(d).

Id.

1 In denying Petitioner's petition, the Superior Court found that...

2 [t]he BPT members supported their conclusion that Petitioner was
3 not suitable for parole as documented in the transcript. They
4 considered both the circumstances of the crime and other relevant
factors. The documents provided by Petitioner indicate that there
is more than enough evidence showing that he is unsuitable for
parole.

5 Answer, Ex. H-13 at 1.

6 Having reviewed the BPT hearing transcripts, this court finds there is indeed "some evidence in
7 the record" to support Petitioner's denial of parole and that the decision by the BPT and the
8 Superior Court was not arbitrary.

9 First, BPT noted that the commitment offense was carried out in an especially cruel
10 manner, which demonstrated a callous disregard for human suffering. Answer, Ex. H-1 at 63.
11 Further, multiple victims were attacked, in what appeared to be a calculated manner for an
12 inexplicable reason. *Id.* Additionally, Petitioner had two disciplinary actions while enlisted in
13 the Marines, one of which is for an assault. *Id.* at 63-64. Petitioner had also received two prison
14 citations for rules violations. *Id.* at 64. While Petitioner clearly had put considerable effort into
15 his rehabilitation, a fact acknowledged by the BPT panel, this court cannot say that the decision
16 of the BPT or the Superior Court was not supported by "some evidence" or was "otherwise
17 arbitrary."

18 **B**

19 Petitioner argues that he meets few of the parole unsuitability criteria and all the
20 applicable suitability criteria. Petition at 27. Petitioner specifically analyzes each and every
21 factor for parole unsuitability and suitability as they pertain to him. *Id.* at 27-33.

22 However, as noted above, this court's review is limited to ensuring that Petitioner has
23 received due process by determining if there is some evidence in the record to support the
24 decision of the BPT and the Superior Court and to assure that those decisions were not arbitrary.
25 It is not the role of this court to evaluate Petitioner's suitability for Parole.

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C

Petitioner's final claims concern the constitutionality of California Code of Regulations, title 15 § 2402(c)(1)(A-E). Specifically, Petitioner claims that the language of § 2402(c)(1)(A-E) is unconstitutionally vague and is an impermissible usurpation of the legislative function. Petition 34-38.

While Petitioner makes a reasoned and thorough argument about the constitutionality of § 2402(c)(1)(A-E), Petitioner does not cite, nor is this court aware of, any United States Supreme Court precedent which calls into question the constitutionality of California Code of Regulations, title 15 § 2402(c)(1)(A-E). As such, this court cannot say that the decision of the BPT or the Superior Court in applying § 2402(c)(1)(A-E) was contrary to clearly established United States Supreme Court precedent or an unreasonable determination of the facts.

IV

In accordance with the above, IT IS HEREBY ORDERED that Petitioner's petition for a writ of habeas corpus under § 2254 is denied.

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DATED: November 1, 2007

/s/ Arthur Alarcón
UNITED STATES CIRCUIT JUDGE
Sitting by Designation